

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01120 Speier v. SunCal Management LLC et al

Chapter 11

#1.00 Status Conference

fr. 11/15/16, 2/21/17

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The status conference is continued by the Court to May 2, 2017 at 10:00 a.m.
Appearances on April 4, 2017 are waived.

SunCal Joint Status Conference Report – Summary and Highlights

Fact discovery has been completed. Expert discovery is scheduled to be completed by September 30, 2017 (per court order).

Pre-trial conference is currently scheduled for January 11, 2018.

Both parties anticipate bringing further rounds of motions for summary adjudication – 3 by the Trustee/Plaintiff and 7 by Defendant/SCM. (Because these are 12 separate adversary proceedings with sometimes differing facts, Defendants estimate that 24+ motions for summary adjudication will actually need to be heard.) Some of these motions will depend on expert testimony and thus need to be heard after September 30, 2017.

The Plaintiff objects to significant continuance of the January 2018 pre-trial date, while the Defendant believes significant continuance will be inevitable given the 12 separate proceedings and the numerous motions for summary adjudication yet to be heard.

Defendant does not consent to the bankruptcy court's entering a final

**United States Bankruptcy Court
Central District of California
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Tuesday, April 04, 2017

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10:00 AM

CONT...

Chapter 11

judgment.

Both parties want the matter sent to mediation at this time.

tentative ruling:

Set up a mediation. Should each of these adversary proceedings be handled separately or should they be grouped before a mediator(s)?

Party Information

Defendant(s):

Argent Management, LLC

Represented By
Craig H Averch

SunCal Management LLC

Represented By
Craig H Averch

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01121 Speier v. SunCal Management, LLC et al

Chapter 11

#2.00 Status Conference

fr. 11/15/16, 2/21/17

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The status conference is continued by the Court to May 2, 2017 at 10:00 a.m.
Appearances on April 4, 2017 are waived.

SunCal Joint Status Conference Report – Summary and Highlights

Fact discovery has been completed. Expert discovery is scheduled to be completed by September 30, 2017 (per court order).

Pre-trial conference is currently scheduled for January 11, 2018.

Both parties anticipate bringing further rounds of motions for summary adjudication – 3 by the Trustee/Plaintiff and 7 by Defendant/SCM. (Because these are 12 separate adversary proceedings with sometimes differing facts, Defendants estimate that 24+ motions for summary adjudication will actually need to be heard.) Some of these motions will depend on expert testimony and thus need to be heard after September 30, 2017.

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**United States Bankruptcy Court
Central District of California
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Chapter 11

judgment.

Both parties want the matter sent to mediation at this time.

tentative ruling:

Set up a mediation. Should each of these adversary proceedings be handled separately or should they be grouped before a mediator(s)?

Party Information

Defendant(s):

Argent Management, LLC

Represented By
Craig H Averch

SunCal Management, LLC

Represented By
Craig H Averch

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Courtroom 303 Calendar**

Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01122 Speier v. SunCal Management LLC et al

Chapter 11

#3.00 Status Conference

fr. 11/15/16, 2/21/17

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The status conference is continued by the Court to May 2, 2017 at 10:00 a.m.
Appearances on April 4, 2017 are waived.

SunCal Joint Status Conference Report – Summary and Highlights

Fact discovery has been completed. Expert discovery is scheduled to be completed by September 30, 2017 (per court order).

Pre-trial conference is currently scheduled for January 11, 2018.

Both parties anticipate bringing further rounds of motions for summary adjudication – 3 by the Trustee/Plaintiff and 7 by Defendant/SCM. (Because these are 12 separate adversary proceedings with sometimes differing facts, Defendants estimate that 24+ motions for summary adjudication will actually need to be heard.) Some of these motions will depend on expert testimony and thus need to be heard after September 30, 2017.

The Plaintiff objects to significant continuance of the January 2018 pre-trial date, while the Defendant believes significant continuance will be inevitable given the 12 separate proceedings and the numerous motions for summary adjudication yet to be heard.

Defendant does not consent to the bankruptcy court's entering a final

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

CONT...

Chapter 11

judgment.

Both parties want the matter sent to mediation at this time.

tentative ruling:

Set up a mediation. Should each of these adversary proceedings be handled separately or should they be grouped before a mediator(s)?

Party Information

Defendant(s):

Argent Management, LLC

Represented By
Craig H Averch

SunCal Management LLC

Represented By
Craig H Averch

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

Chapter 11

:
Adv#: 1:16-01124 Speier v. SunCal Management LLC et al

#4.00 Status Conference

fr. 11/15/16, 2/21/17

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The status conference is continued by the Court to May 2, 2017 at 10:00 a.m.
Appearances on April 4, 2017 are waived.

SunCal Joint Status Conference Report – Summary and Highlights

Fact discovery has been completed. Expert discovery is scheduled to be completed by September 30, 2017 (per court order).

Pre-trial conference is currently scheduled for January 11, 2018.

Both parties anticipate bringing further rounds of motions for summary adjudication – 3 by the Trustee/Plaintiff and 7 by Defendant/SCM. (Because these are 12 separate adversary proceedings with sometimes differing facts, Defendants estimate that 24+ motions for summary adjudication will actually need to be heard.) Some of these motions will depend on expert testimony and thus need to be heard after September 30, 2017.

The Plaintiff objects to significant continuance of the January 2018 pre-trial date, while the Defendant believes significant continuance will be inevitable given the 12 separate proceedings and the numerous motions for summary adjudication yet to be heard.

Defendant does not consent to the bankruptcy court's entering a final

**United States Bankruptcy Court
Central District of California
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Chapter 11

judgment.

Both parties want the matter sent to mediation at this time.

tentative ruling:

Set up a mediation. Should each of these adversary proceedings be handled separately or should they be grouped before a mediator(s)?

Party Information

Defendant(s):

Argent Management, LLC

Represented By
Craig H Averch

SunCal Management LLC

Represented By
Craig H Averch

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
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Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01125 Speier v. SunCal Management LLC et al

Chapter 11

#5.00 Status Conference

fr. 11/15/16, 2/21/17

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The status conference is continued by the Court to May 2, 2017 at 10:00 a.m.
Appearances on April 4, 2017 are waived.

SunCal Joint Status Conference Report – Summary and Highlights

Fact discovery has been completed. Expert discovery is scheduled to be completed by September 30, 2017 (per court order).

Pre-trial conference is currently scheduled for January 11, 2018.

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Defendant does not consent to the bankruptcy court's entering a final

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Hearing Room 303

10:00 AM

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Chapter 11

judgment.

Both parties want the matter sent to mediation at this time.

tentative ruling:

Set up a mediation. Should each of these adversary proceedings be handled separately or should they be grouped before a mediator(s)?

Party Information

Defendant(s):

Argent Management, LLC

Represented By
Craig H Averch

SunCal Management LLC

Represented By
Craig H Averch

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01126 Speier v. SunCal Management LLC et al

Chapter 11

#6.00 Status Conference

fr. 11/15/16, 2/21/17

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The status conference is continued by the Court to May 2, 2017 at 10:00 a.m.
Appearances on April 4, 2017 are waived.

SunCal Joint Status Conference Report – Summary and Highlights

Fact discovery has been completed. Expert discovery is scheduled to be completed by September 30, 2017 (per court order).

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**United States Bankruptcy Court
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10:00 AM

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Chapter 11

judgment.

Both parties want the matter sent to mediation at this time.

tentative ruling:

Set up a mediation. Should each of these adversary proceedings be handled separately or should they be grouped before a mediator(s)?

Party Information

Defendant(s):

Argent Management, LLC

Represented By
Craig H Averch

SunCal Management LLC

Represented By
Craig H Averch

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton

**United States Bankruptcy Court
Central District of California
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Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01127 Speier v. SunCal Management LLC et al

Chapter 11

#7.00 Status Conference

fr. 11/15/16, 2/21/17

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The status conference is continued by the Court to May 2, 2017 at 10:00 a.m.
Appearances on April 4, 2017 are waived.

SunCal Joint Status Conference Report – Summary and Highlights

Fact discovery has been completed. Expert discovery is scheduled to be completed by September 30, 2017 (per court order).

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**United States Bankruptcy Court
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10:00 AM

CONT...

Chapter 11

judgment.

Both parties want the matter sent to mediation at this time.

tentative ruling:

Set up a mediation. Should each of these adversary proceedings be handled separately or should they be grouped before a mediator(s)?

Party Information

Defendant(s):

Argent Management, LLC

Represented By
Craig H Averch

SunCal Management LLC

Represented By
Craig H Averch

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Courtroom 303 Calendar**

Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

:

Chapter 11

Adv#: 1:16-01128 SPEIER v. SUNCAL MANAGEMENT, LLC et al

#8.00 Status Conference

fr. 11/15/16, 2/21/17

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The status conference is continued by the Court to May 2, 2017 at 10:00 a.m.
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SunCal Joint Status Conference Report – Summary and Highlights

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**United States Bankruptcy Court
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Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

CONT...

Chapter 11

judgment.

Both parties want the matter sent to mediation at this time.

tentative ruling:

Set up a mediation. Should each of these adversary proceedings be handled separately or should they be grouped before a mediator(s)?

Party Information

Defendant(s):

Argent Management LLC

Represented By
Craig H Averch

SUNCAL MANAGEMENT, LLC

Represented By
Craig H Averch

Plaintiff(s):

STEVEN M. SPEIER

Represented By
Evan C Borges
Mike D Neue
William N Lobel
Gary A Pemberton

**United States Bankruptcy Court
Central District of California
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Courtroom 303 Calendar**

Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

Chapter 11

:
Adv#: 1:16-01129 SPEIER v. SUNCAL MANAGEMENT, LLC et al

#9.00 Status Conference

fr. 11/15/16, 2/21/17

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The status conference is continued by the Court to May 2, 2017 at 10:00 a.m.
Appearances on April 4, 2017 are waived.

SunCal Joint Status Conference Report – Summary and Highlights

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**United States Bankruptcy Court
Central District of California
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Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

CONT...

Chapter 11

judgment.

Both parties want the matter sent to mediation at this time.

tentative ruling:

Set up a mediation. Should each of these adversary proceedings be handled separately or should they be grouped before a mediator(s)?

Party Information

Defendant(s):

Argent Management LLC

Represented By
Craig H Averch

SUNCAL MANAGEMENT, LLC

Represented By
Craig H Averch

Plaintiff(s):

STEVEN M. SPEIER

Represented By
Evan C Borges
Mike D Neue
William N Lobel
Gary A Pemberton

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01130 SPEIER v. SUNCAL MANAGEMENT, LLC et al

Chapter 11

#10.00 Status Conference

fr. 11/15/16, 2/21/17

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The status conference is continued by the Court to May 2, 2017 at 10:00 a.m.
Appearances on April 4, 2017 are waived.

SunCal Joint Status Conference Report – Summary and Highlights

Fact discovery has been completed. Expert discovery is scheduled to be completed by September 30, 2017 (per court order).

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**United States Bankruptcy Court
Central District of California
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Courtroom 303 Calendar**

Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

CONT...

Chapter 11

judgment.

Both parties want the matter sent to mediation at this time.

tentative ruling:

Set up a mediation. Should each of these adversary proceedings be handled separately or should they be grouped before a mediator(s)?

Party Information

Defendant(s):

Argent Management LLC

Represented By
Craig H Averch

SUNCAL MANAGEMENT, LLC

Represented By
Craig H Averch

Plaintiff(s):

STEVEN M. SPEIER

Represented By
Evan C Borges
Mike D Neue
William N Lobel
Gary A Pemberton

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Courtroom 303 Calendar**

Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01131 Speier v. SunCal Management LLC et al

Chapter 11

#11.00 Status Conference

fr. 11/15/16, 2/21/17

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The status conference is continued by the Court to May 2, 2017 at 10:00 a.m.
Appearances on April 4, 2017 are waived.

SunCal Joint Status Conference Report – Summary and Highlights

Fact discovery has been completed. Expert discovery is scheduled to be completed by September 30, 2017 (per court order).

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**United States Bankruptcy Court
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Courtroom 303 Calendar**

Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

CONT...

Chapter 11

adjudication yet to be heard.

Defendant does not consent to the bankruptcy court's entering a final judgment.

Both parties want the matter sent to mediation at this time.

tentative ruling:

Set up a mediation. Should each of these adversary proceedings be handled separately or should they be grouped before a mediator(s)?

Party Information

Defendant(s):

Argent Management, LLC

Represented By
Craig H Averch

SunCal Management LLC

Represented By
Craig H Averch

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton

**United States Bankruptcy Court
Central District of California
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Courtroom 303 Calendar**

Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

1:09-14214 Roosevelt Lofts, LLC

Chapter 11

#12.00 Motion to Withdraw as Attorney for the
Debtor and Debtor in Possession

fr. 1/3/17

Docket 1209

***** VACATED *** REASON: Per Stip. cont. to 4/18/17 at 10am (eg)**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Roosevelt Lofts, LLC

Represented By
David L. Neale
Juliet Y Oh
Lindsey L Smith
Alan J Carnegie
Ian Landsberg
Kevin M Davis

Movant(s):

Roosevelt Lofts, LLC

Represented By
David L. Neale
Juliet Y Oh
Lindsey L Smith
Alan J Carnegie
Ian Landsberg
Kevin M Davis

**United States Bankruptcy Court
Central District of California
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Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

1:09-14214 Roosevelt Lofts, LLC

Chapter 11

#13.00 U.S. Trustee Motion to dismiss or convert Case With an Order Directing Payment of Quarterly Fees and for Judgment Thereon

fr. 12/20/16; 1/3/17

Docket 1196

***** VACATED *** REASON: Cont. to 4/18/17 @ 10am (eg)**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Continued by stipulation to April 18, 2017 at 10:00 a.m.

prior tentative ruling (1/3/17)

The major issue here is who is in control of the Debtor and of the money. Who is counsel for the Debtor? Kevin Davis has filed a motion to be relieved of that position. This is a confirmed case and we need to discuss the process and ramifications of a post-confirmation conversion (is that even possible?) or dismissal. I don't believe that a trustee can be appointed, but maybe I am wrong on this. But perhaps I can appoint a manager or some such person?

Please note that this is being prepared on the morning of 12/28. Because of the long weekend, it may not reflect later filings. These will be reviewed on Jan. 3, just before the hearing.

prior tentative ruling (12/20/16)

This motion is solely due to the failure to pay the third quarter U.S. Trustee fees of \$325 and to file the post-confirmation report.

The Los Angeles Community College District opposed since dismissal is not in the best interest of creditors. Instead, this case should be converted. The easement litigation is continuing. On 11/22/16 the Court of Appeal ruled in favor of the LACCD and the final order will be about \$226,000. This will be the claim amount and the LACCD will seek to have it paid from the estate.

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CONT... Roosevelt Lofts, LLC

Chapter 11

Levene Neale, former counsel for the Debtor, takes no position, but notes that it is currently holding funds in reserve per the Plan. This is the Class Action Reserve, which is currently in the amount of \$1,784,271.61. Various parties have competing claims to these funds.

Debtor's current counsel requests that this be continued because he did not have notice.

proposed ruling

There is plenty of money to pay the UST fees. It seems that there is nothing to report until the money in the reserve is distributed. There is no reason to grant this at this time or to convert the case.

Continue to 3/21/17 at 10:00 a.m.

If all parties agree to submit on the tentative ruling, appearances will be waived.

Party Information

Debtor(s):

Roosevelt Lofts, LLC

Represented By
David L. Neale
Juliet Y Oh
Lindsey L Smith
Alan J Carnegie
Ian Landsberg
Kevin M. Davis

**United States Bankruptcy Court
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Tuesday, April 04, 2017

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10:00 AM

1:09-14214 Roosevelt Lofts, LLC

Chapter 11

#14.00 Post Confirmation Status Conference re: Chapter 11 case

fr. 12/01/10, 3/2/11, 7/12/11, 10/25/11, 1/10/12,
5/8/12, 9/11/12, 4/30/13, 7/9/13, 11/19/13, 12/10/13,
12/17/13, 7/8/14, 1/27/15; 3/31/15, 7/28/15; 11/17/15; 3/15/16; 4/5/16
8/30/16; 12/20/16; 1/3/17

Docket 1

***** VACATED *** REASON: Cont. to 4/18/17 @ 10am (eg)**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

This was continued to resolve the issue of who is in control of the Debtor.
Continued by stipulation to April 18, 2017 at 10:00 a.m.

prior tentative ruling (12/20/16)

Per the status report filed 12/15/16, there is about \$1.7 million remaining in the reserve fund. This should be sufficient to pay the LACCD claim, any non-paid attorneys, and an Abselet claim.

proposed ruling: Continue to freeze the distribution of the Class 2 Mechanic's Lien funds. It appears that the appeal is over unless the California Supreme Court takes it. Once it is final, there is no reason to continue to hold this money and the case should be wrapped up. Continue this status conference until March 21, 2017 at 10:00 a.m.

If all parties agree to submit on the tentative ruling, appearances will be waived.

prior tentative ruling (8/30/16)

Continue the freeze of the distribution of class 2 mechanic's lien funds.
Continue the status conference without appearance to 12/20/16 at 10:00 a.m.

prior tentative ruling (11/17/15)

**United States Bankruptcy Court
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CONT... Roosevelt Lofts, LLC

Chapter 11

On 10/14/15 the LACCD filed a status report as to the state court action. The judgment for LACCD was for \$661,700 and costs requested are in the amount of \$12,174.37. On 8/7/15. the Debtor filed a notice of appeal. This is case #B266057. This appeal is now pending.

On 11/13/15 Debtor filed its post-confirmation status report. It echoes the LACCD report as to that law suit. It then discusses the Howard Abselet judgment. It gives its take on what is happening in the district court and the execution.

On 11/16/15 Howard Abselet filed a response to the status report concerning his judgment against Solyman Yashouafar, Massoud Yashouafar, and Alliance Lending Group, Inc. He makes it clear that he is not levying on the RLI assets or seeking a distribution of those assets except that through an execution sale, he purchased all of S. Yashouafar's and M. Yashouafar's interests in RLI.

At this point in time, the situation concerning the Abselet judgment if not ripe for this Court. No distribution is being made to RLI or through that entity to its shareholders.

If there is no opposition, continue without appearance to March 1, 2016 at 10:00 a.m.

prior tentative ruling (7/28/15)

Per the status report filed on 7/27, the LACCD lawsuit is proceeding. A jury trial was held in April 2015 and yielded a judgment for LACCD in the amount of approximately \$625,000. Punitive damages were stricken. Both sides have appealed.

Abselet is proceeding to try to obtain property in execution of his judgment. Apparently this is through the District Court and Debtor asserts that it is not receiving notice. Actions are proceeding in the District Court and there is nothing further pending here at this time.

Continue without appearance to 11/17/15 at 10:00 a.m.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

CONT... Roosevelt Lofts, LLC

Chapter 11

prior tentative ruling (3/31/15)

Per the status report filed on 3/16/15, the only remaining disputed claim concerns that of LACCD. The superior court trial is scheduled for April 16-24, 2014.

As to the Abselet matter, Abselet has gone forward in the district court to obtain an order that the Marshal seize the assets of the Debtor. Debtor claims that this is a violation of my prior order freezing the class 2 mechanic's lien funds without a prior order of the bankruptcy court. Debtor asserts that this was done without notice to the Debtor or to LACCD and that the order is void.

Comment by the Court - we are not going to play ping pong with the district court. I can't tell whether the Debtor is intending to just ignore the district court order or move proactively in this court. I do not intend to issue an order that freezes the distribution of the mechanic's lien funds. The prior order on the mechanic's lien funds will have to suffice. As to admonishing Mr. Kim, if the Debtor brings a motion, I will consider it at that time. But I also may ask the district court judge (unnamed in this status report) to withdraw the reference as to that motion and to deal with it.

prior tentative ruling: (7/8/14)

Per the status report filed on 6/24/14, Levene Neal is still holding the cash reserve money in a segregated trust account. The professionals have been paid and so have the mechanic's liens. The firm is holding the money pending resolution of the Abselet issues. Also the firm is holding enough to payoff the disputed claims of 700 Wilshire and the LACCD once they are resolved. This is set for trial in the LASC in 12/14. There is an interpleader adversary that has a status conference on 7/22.

Continue this status conference without appearance to January 27, 2015 at 10:00 a.m. The Mara adversary status conference will go forward as scheduled on July 22, 2014.

Party Information

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10:00 AM

CONT... Roosevelt Lofts, LLC

Chapter 11

Debtor(s):

Roosevelt Lofts, LLC

Represented By
David L. Neale

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#15.00 Status Conference re: Ch 11 Case

fr. 1/24/2013, 4/30/13, 5/14/13, 7/23/13, 8/6/13,
9/17/13, 9/24/13, 11/19/13, 12/17/13, 1/21/14, 2/18/14,
3/11/14, 4/15/14, 5/6/14, 6/24/14, 9/9/14, 9/23/14,
10/7/14, 11/24/14, 1/6/15, 1/20/15, 2/10/15, 3/10/15,
4/28/15; 5/12/15; 9/29/15, 10/22/15, 12/8/15, 3/1/16,
6/7/16, 7/12/16, 8/16/16, 10/11/16; 12/20/16

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Per the Trustee's status report filed on 3/28/17:

Tidus Litigation - trial delayed due to Ms. McClure's illness. She just turned over voluminous documents in response to discovery request and that may delay the trial even longer.

McClure v. Litt - stayed by the superior court.

Litt Appeal - Judge Wu is trying to get a consensual resolution of the claims in the Litt litigation. As to the appeal, there has been supplemental briefing on the impact, if any, of *Pacifica L 51 LLC v. New Investments, Inc.* Judge Wu then remanded the Litt Appeal to the bankruptcy court for further consideration. Status conference continued in front of Judge Wu for 6/7/17.

Abandonment of Toyota Land Cruiser and Trailer - the Trustee just gave notice of his intent to abandon these.

As to the remand, we will discuss how to proceed at the 4/4/17 hearing. But it seems to me that it is probably appropriate to obtain new appraisals for the Corbett properties as well as new figures on the PMB liens. Even though property values have been rising, it seems that the Trustee would be wise to also select one or more other properties for a new appraisal, etc. in case the equity in the Corbett properties has fallen or is expected to fall below the 200% threshold. Please discuss this before the hearing.

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10:00 AM

CONT... Shirley Foose McClure

Chapter 11

prior tentative ruling (12/20/16)

Per the status report filed on 12/13/16, the rental properties are all insured and PMB is being paid the amounts that were paid prior to the Trustee's appointment. There is a new lease on Hewitt, with one year of prepaid rent. Corbett #1 has been repaired and is ready to be leased. Corbett #2 tenant has renewed that lease through 12/17. A broker will be hired to sell the Michigan properties. The Trustee has settled with the California Franchise Tax Board - a 9019 motion is pending.

The Debtor is unwell and awaiting surgery, so cannot fully respond to the Trustee's inquiries. The Tidus trial is also being delayed due to Ms. McClure's health. The Trustee intends to proceed with that trial.

The Litt appeal is pending and Judge Wu ordered the Trustee to provide Litt's litigation counsel with a list of the Trustee's claim in the Litt Litigation. The Trustee is moving forward on this.

From the Court: There is a notice to compromise with the Franchise Tax Board. \$16,2 million will be recognized as gross income to the Debtor for tax year 2006 and is not subject to a valid 1033 Election. Debtor did not realize taxable Cancellation of Debt Income in connection with the foreclosure of the Long Beach properties. No opposition received as of 12/18. The Court will sign the order.

Continue the status conference to April 4, 2017 at 10:00 a.m. If the Trustee, McClure, Litt, and PNB all agree, no appearance will be needed on 12/20.

prior tentative ruling (10/11/16)

Mr. Reitman has been adding staff. I have no other indication of what is happening since no status report was filed. It may be that he has not calendared this hearing. If there is no appearance, I will continue it and make sure that he knows that date and to give notice to all interested parties.

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10:00 AM

CONT... Shirley Foose McClure

Chapter 11

prior tentative ruling (8/16/16)

On 8/12 Mr. Reitman filed an application to employ his firm as counsel for the Trustee. No hearing was scheduled. I will hold this for the lodging period to see if there are any objections.

This is a case where the professional fees have become immense due to a variety of factors. I want to be sure that Mr. Reitman will keep a close handle on fees and will not pass on to attorneys work that is properly done by the Trustee himself. Also, Ms. McClure is able to provide some assistance, though her desire to run the case may interfere with her utility. Let's discuss this.

As to the overlaps in various matters which are disclosed in the application, I am sure that the Firm can set up a structure so that there is no conflict.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By

Andrew Goodman

Yi S Kim

Robert M Scholnick

James R Felton

Faye C Rasch

Faye C Rasch

Elaine Nguyen

**United States Bankruptcy Court
Central District of California
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Judge Geraldine Mund, Presiding
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Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

1:15-12309 Roberta Mackey

Chapter 7

Adv#: 1:15-01221 Gordon et al v. Mackey

#16.00 Defendant's Motion For Attorney's Fees as
The Prevailing Party.

fr. 2/21/17

Docket 158

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Additional for 4/4:

Mr. Bowen timely filed the information that the acting trustee of the Plaintiffs' trust is their son Robert W. Gordon, 5138 Melvin Ave., Tarzana 91356. On 3/5, Mr. Lally filed a proof of service on Robert Gordon. On 3/17, Mr. Bowen filed an opposition on behalf of the Gordon Family Trust. This largely repeats the opposition previously filed by Mr. Bowen on his own behalf, but adds some probate issues as to the Trust.

He assert that to proceed against the personal representative of a decedent, the claimant must comply with Probate Code Part 4 of Division 7, beginning with § 9000. There can be no claim against Robert Godon unless it can be shown that the claim cannot be satisfied from the estate of the decedents. There are about \$300,000 in assets of the decedents that were not in the trust and will have to go through probate. In short, Mr. Lally must follow the process of filing a claim, having it paid or rejected and, if rejected, applying to the probate court. *Please note that the assertion about the need for probate and the amount of assets is hearsay on the part of Mr. Bowen. Also, apparently, no probate has yet been opened.*

Mr. Bowen cites to the wrong sections of the Probate Code since the claim will be made against the Trust. That is covered in Probate Code § 19000 et. seq. This allows the Trustee to give notice and file such notice with the court, which starts the claims date running. However, the Trustee is not required to do so, which allows the claimant to proceed as otherwise provided by law. Since the Trustee has not filed a notice as of this date, it appears that

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CONT... Roberta Mackey

Chapter 7

a creditor can directly deal with him. Even if he has opened a proceeding in the superior court, if a creditor files a claim and it is not acted on within 30 days, it is deemed rejected.

I am no expert in probate procedure, but we need to figure out how to resolve this claim without unnecessary cost and delay. I had hoped to be able to deal with it all at once - both as to Mr. Bowen and the Trust - but that does not seem feasible without significant delay. So I think that the best way is to determine it as to Mr. Bowen and he can seek indemnification from the Trust if I rule against him.

The Motion

The Debtor seeks \$38,000+ for her attorney fees in defending this adversary proceeding. This is against both the Plaintiffs and their attorney. Four loans were involved. Three had promissory notes, each of which had an attorney's fee provision on behalf of the prevailing party. The initial complaint was under §§523(a)(2), (4), and (6), as well as §§727(a)(2) and (4). At the summary judgment stage, the court granted judgment to the Defendant on §§ 523(a)(2) and (4) and §727(a)(2). The two remaining causes of action - §523 (a)(6) and §727(a)(4) - went to trial on November 7, 2016 and the Defendant prevailed on both.

Prior to this, the Plaintiffs had sued the Defendant in the superior court for fraud, elder abuse, and breach of contract. In that case, the superior court ruled in favor of the Defendant as to fraud, which was the basis for the summary judgment in this case as to §523(a)(2) in that the Plaintiffs were collaterally estopped from pursuing that identical cause of action in the bankruptcy case. The §523(a)(2) complaint was filed after the superior court had already ruled.

The Defendant was the prevailing party in each cause of action and is entitled to her fees under CA Civ. Code §1717(b)(2). The §523(a)(2) cause of action was frivolous because the superior court had already granted the Defendant judgment on that same set of facts and theory of law.

Attorney's fees under Civ.Code §1717 are allowed as a recoverable cost under Code of Civ. P §1032 and 1033.5.

Beyond that, §523(d) allows fees to a Debtor on a case concerning a consumer debt brought under §523(a)(2). These were not business-related notes and thus were consumer loans. The fraud cause of action was frivolous and not substantially justified, particularly given the prior ruling by the

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CONT... Roberta Mackey

Chapter 7

superior court.

The §727 action had no basis for denial of discharge for the transfer of a 50% interest in the insurance business. This was brought in bad faith and fees should be awarded to the Defendant under Civ. Code §1717. To the extent that the litigation concerned the Debtor's breach of contract, attorney's fees should be allowed under Civ. Code §1717. American Express Travel Related Services Co. v. Hashemi (In re Hashemi), 104 F.3d 1122, 1127 (9th Cir. 1997).

Both Plaintiffs and their counsel are liable for the Defendant's attorney's fees pursuant to the Notes.

Opposition

As noted above, initially Mr. Bowen opposed on his own behalf, but now has filed essentially the same opposition on behalf of Robert Gordon, the Testamentary Trustee:

(1) The motion was filed more than 14 days after the judgment and was untimely under LBR 7054-1(g). The judgment was entered on Jan. 4, 2017, but this motion was filed on Jan. 23, which was more than 14 days after the judgment.

(2) This was a business debt and not a consumer one, so §523(d) is not applicable. This debt was not for personal, family, or household purposes, but was for the husband's business. Thus it is not a consumer debt. §101(8).

(3) The sole issue is whether the debt was non-dischargeable, not whether the debt was on a contract. So Civ. Code §1717 does not apply. As to the contract portion, the Gordons were the prevailing party in the state court and they were awarded attorney fees. The issues determined in the adversary proceeding did not fall within the attorney fees provision of the contract, since that had already been litigated. Thus the two requirements of Fry v. Dinan were not met. Fry v. Dinan (in re Dinan), 448 B.R. 775, 785 (9th Cir. BAP 2011). Because there is no contractual right left to assert attorney fees, there is no legal basis to award them.

(4) As to the sanctions, due to the state court findings and the prior non-dischargeable judgment against Mr. Robin, the Gordons were substantially

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CONT... Roberta Mackey

Chapter 7

justified in believing that the current debt should be non-dischargeable, particularly given the lower standard of fraud in the bankruptcy court (preponderance of the evidence).

Mr. Bowen requests sanctions under FRBP 9011.

Reply

Mr. Lally responds to the issues raised by Mr. Bowen. As to the reply of Robert Gordon, Mr. Lally asserts that because Mr. Bowen has a conflict of interest, he cannot represent Mr. Gordon. He accuses Mr. Bowen of ethical violations. He then goes on to state that it is undisputable that the Notes have attorney fee clauses and that his client is entitled to her fees. He also points out that since there is no declaration by Mr. Gordon, the allegations of Trust assets are all hearsay and so there is no admissible evidence in response to this motion.

Mr. Lally argues that these were consumer debts and that the issue of a business only arose in the §727 context as to the transfer of shares in the insurance agency.

Clearly there should be no sanctions against Mr. Lally. There was no separate motion and there has been compliance with the safe harbor provision of Rule 9011.

Analysis

The Court notes that Mr. Lally cites to Green Tree Servicing v. Giusto, 553 B.R. 778 (N.D. Cal. 2016) and Penrod v. AmeriCredit Financial Services, Inc., 802 F.3d 1084 (9th Cir. Oct. 1, 2015) for the proposition that Mr. Bowen can be liable for these fees. Neither case is relevant as to that point, but they do deal with the question of when is bankruptcy litigation considered to be “on a contract” so as to allow fees to be awarded to the prevailing party..

Giusto arises out of an unsuccessful motion for relief from the automatic stay to foreclose on a piece of real property owned by the debtor. The debtor sought her fees under Civ. Code §1717 in that the note contained an attorney fee clause. The issue was whether attorney fees could be recovered on a motion for relief from stay in that this was not an action on a contract. The district court, on appeal, held that In re Johnson, 756 F.2d 738 (9th Cir. 1985) is still good law, that an motion to lift stay is not an action on a contract, and thus Civ. Code §1717(a) does not apply. However, if the action

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CONT... Roberta Mackey

Chapter 7

is on the contract, under Travelers Casualty & Surety Co. of America v. PG&E, 549 U.S. 443, 127 S. Ct. 1199, 167 L. Ed. 2d 178 (2007) Civ. Code § 1717(a) is not prevented from applying merely because the action is in the context of bankruptcy law.

The cases of Penrod and Bos clarify the parameters of the application of Civ. Code §1717(a) in bankruptcy cases.

Bos v. Bd. Of Trs., 818 F.3d 486 (9th Cir. 2016) is a §523(a)(4) case in which the debtor agreed that the underlying trust agreements and promissory note were fully enforceable, that he had breached them, and that his debt to the plaintiffs was valid. However, he disputed that the exceptions to discharge applied. On appeal, the Ninth Circuit determined that Bos was not a fiduciary under §523(a)(4). Then Bos sought to recover his attorney's fees for this non-dischargeability action.

The Ninth Circuit held that a dischargeability action is not "on a contract" unless there is an adjudication as to the validity of the note. Otherwise the note is merely collateral to the §523(a) proceeding. Since the existence and breach of the note was already determined, the "litigation from that point forward asked only whether federal bankruptcy law forbade Bos from discharging the debts everyone agreed he owed to the Funds. Such litigation is collateral to a contract rather than "on a contract," and as a consequence Bos may not use section 1717 to recover the fees he incurred in pursuing it." Bos, 818 F.3d at 490.

Penrod concerned the treatment of a claim in chapter 13, the interpretation of a car loan contract, and the granting of a security interest under that contract. The Court in Bos summarized why the action in Bos was not "on contract," while that in Penrod was:

Penrod incurred her attorney's fees in an action that sought "to enforce, or avoid enforcement of, the provisions of the contract" between herself and one of her creditors. Id. at 1088. Specifically, the action underlying Penrod's motion for fees had asked "whether [a] provision of the contract should be enforced according to its terms, or whether its enforceability was limited by bankruptcy law to exclude [a particular] portion of the loan. By prevailing in that litigation, Penrod

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CONT...

Roberta Mackey

Chapter 7

obtained a ruling that precluded [her creditor] from fully enforcing the terms of the contract." Id. (internal citations omitted). Penrod's action, in other words, required "the bankruptcy court to determine the enforceability of the . . . agreement," and so it was comfortably an action "on a contract" within section 1717's previously recognized reach. Baroff, 105 F.3d at 442. In Bos's case, by contrast, the relevant action did not raise any question about the enforceability of the Trust Agreements or the Note. Such action was therefore not "on a contract," and the attorney's fees Bos incurred are not recoverable under section 1717. Bos, 818 F.3d at 490-91.

Similarly, the action before this Court did not seek to have the Court determine the enforceability of the terms of the three notes. The Court was asked to rule on whether Ms. Mackey had caused a willful and malicious injury to the Gordons when she obtained the loans for her husband's business. There was no dispute as to the amount of money that was lent or the terms under which it was lent. The issue as to the loans was what Mackey knew at the time of their signing and whether she believed that they could not be repaid in a timely fashion. Thus, this does not fall under the Civ. Code §1717(a) provision that the action must be "on a contract."

As it §362(a)(2)(A), Mr. Lally is well aware that a "consumer debt" is defined as one that is "incurred by an individual primarily for a personal, family, or household purpose." 11 U.S.C. §101(8). And because this was not a consumer debt, but was for the purpose of the business of Fred Robin, the prevailing defendant in §523(a)(2) is not entitled to fees under §523(d).

As to the claim for fees for the §727(a)(4) action, there is no contractual or other statutory basis. This is not an action on contract, so § 1717(a) does not apply. As to the claim that it was in bad faith, there is no evidence to support a claim for sanctions against the Gordons or their attorney and there is no showing that the requirements to seek Rule 9011 sanctions have been complied with.

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10:00 AM

CONT...

Roberta Mackey

Chapter 7

Deny the motion for sanctions against Mr. Bowen. There are also no bases for sanctions against the Gordons. Thus, the motion as to them (and now their representative) is also denied.

prior tentative ruling (2/21/7)

Debtor seeks \$38,000+ for her attorney fees in defending this adversary proceeding. This is against both the Plaintiffs and their attorney. On 1/21/17, Mr. Bowen filed a notice of the deaths of both of the Gordons (dkt. 161). Thus he has no authority to appear on their behalf.

Mr. Bowen opposes on his own behalf:

(1) The motion was filed more than 14 days after the judgment and was untimely under LBR 7054-1(g). The judgment was entered on Jan. 4, 2017, but this motion was filed on Jan. 23, which was more than 14 days after the judgment.

(2) This was a business debt and not a consumer one, so §523(d) is not applicable. This debt was not for personal, family, or household purpose, but was for the husband's business. thus it is not a consumer debt. §101(8).

(3) The sole issue is whether the debt was non-dischargeable, not whether the debt was on a contract. So CC §1717 does not apply. As to the contract portion, the Gordons were the prevailing party in the state court and they were awarded attorney fees. The issues determined in the adversary proceeding did not fall within the attorney fees provision of the contract, since that had already been litigated. Thus the two requirements of Fry v. Dinan were not met. Fry v. Dinan (in re Dinan), 448 B.R. 775, 785 (9th Cir. BAP 2011). Because there is no contractual right left to assert attorney fees, there is no legal basis to award them.

As to the sanctions, due to the state court findings and the prior non-dischargeable judgment against Mr. Robin, the Gordons were substantially justified in believing that the current debt should be non-dischargeable, particularly given the lower standard of fraud in the bankruptcy court (preponderance of the evidence).

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10:00 AM

CONT... Roberta Mackey

Chapter 7

Mr. Bowen requests sanctions under FRBP 9011.

Reply

Mr. Lally responds to the issues raised by Mr. Bowen.

FROM THE COURT:

This will have to be put as a claim in the probate or, if no probate, their executor(s) must be named and served. The fees as to Mr. Bowen should be heard at the same time. Therefore, I will need to continue this. By 2/28, Mr. Bowen is to provide Mr. Lally and the Court with the necessary information on the status of the Gordons' estates. He is also to give the Executor (s)/Administrator(s) a copy of the motion. This will be continued to 3/28/17 at 10:00 a.m. As soon as Mr. Lally receives the contact information from Mr. Bowen, he is to give notice to the estate(s) representative(s) of this motion and the upcoming hearing.

Party Information

Debtor(s):

Roberta Mackey

Represented By
James R Selth

Defendant(s):

Roberta Mackey

Represented By
David Brian Lally

Plaintiff(s):

Jacquelynn Y. Gordon

Represented By
Ray B Bowen Jr

William M. Gordon

Represented By
Ray B Bowen Jr

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

1:16-11670 The Automart, Inc.

Chapter 11

Adv#: 1:16-01098 West Marine Products, Inc v. The Automart, Inc. et al

#17.00 Status Conference re: Amended First Complaint
by Shani Williams on behalf of West Marine Products, Inc
against all defendants

fr. 9/27/16, 10/11/16; 10/25/16, 1/17/17

Docket 18

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Plaintiff has substituted in new counsel. Per the joint status report filed on 3/21/17, discovery is underway, but the parties expect to go to trial relatively soon. Both expect a 3-4 day trial and request a pretrial conference. Plaintiff wants to mediate, but defendant does not. Both sides are frustrated with the actions of the other. It appears that they are starting to discuss settlement.

Set a discovery cutoff date of July 14, 2017. Continue the status conference to July 25 or August 1, whichever is better for the parties. At that time, I will determine a date for a joint pretrial conference and I expect to take this to trial - if it does not settle - in the early Fall.

prior tentative ruling (1/17/17)

I am a little confused. According to the joint status report filed on 1/4/17, the parties expect to complete discovery in March 2107. But according to the joint status report filed on 12/9, they have worked out a joint discovery plan, which involves two stages of discovery. The first stage relates to the alter ego issues. Stage two concerns the balance of the issues. There are quite a few depositions contemplated by both sides. They anticipate completion of discovery by 7/31/17.

In the 1/4/17 status report they will be ready for trial in May 2017 and want a pretrial conference after 4/18/17.

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CONT... The Automart, Inc.

Chapter 11

Unless the parties believe that there is a reason to appear (in person or by phone) on 1/17, I will continue the status conference without appearance to April 4, 2017 at 10:00 a.m. Hopefully you will then be ready for a pretrial date and/or to set a mediation.

Party Information

Debtor(s):

The Automart, Inc.

Represented By
Blake J Lindemann
Jonathan Shenson
Lauren N Gans

Defendant(s):

Martin Spiegel

Represented By
Lauren N Gans
Jonathan Shenson

The Automart, Inc.

Represented By
Lauren N Gans
Jonathan Shenson

Plaintiff(s):

West Marine Products, Inc

Represented By
Shani Williams

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar and Solyman Yashouafar

Chapter 11

#18.00 Trustee's Motion for Order Converting Chapter
11 Case to Chapter 7

fr. 12/6/16, 3/28/17

Docket 192

***** VACATED *** REASON: Stip. order entered cont. to 5/30/17 @ 10
(eg)**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Massoud Aaron Yashouafar

Represented By
C John M Melissinos

Solyman Yashouafar

Represented By
Mark E Goodfriend

Solyman Yashouafar

Represented By
Mark E Goodfriend

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards

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10:00 AM

1:16-12255 Solyman Yashouafar and Massoud Aaron Yashouafar

Chapter 11

#18.01 Motion for 2004 Examination of Jack Nourafshan
and Parvin Nourafshan and Production of Documents

fr. 3/28/17

Docket 368

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

This was continued from 3/28. Mr. McCarthy was to file his specific objections by 3/30 at noon as to any category. A meet and confer was to be held on 3/31.

On 4/3 the court was notified that this has now settled and that a stipulated order is being lodged. Thus, this is now off calendar.

Party Information

Debtor(s):

Massoud Aaron Yashouafar

Represented By
C John M Melissinos
Mark M Sharf

Solyman Yashouafar

Represented By
Mark E Goodfriend

Movant(s):

Israel Abselet

Represented By
Henry S David

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

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CONT... Solyman Yashouafar and Massoud Aaron Yashouafar

Chapter 11

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Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

#19.00 Status Conference re: Chapter 11 case

fr. 9/1/16(xfr from Judge Tighe's calendar), 9/27/16,
10/11/16; 10/26/16; 11/15/16, 12/6/16, 3/28/16

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Continued to 5/30/17 at 10:00 a.m.

Party Information

Debtor(s):

Solyman Yashouafar

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

1:16-12388 Major Textile Imports Inc.

Chapter 7

#20.00 Status Conference re: Debtor's Objection to
(i) Claim (#11) of Sepehr Omrani as Lacking the
Required Evidence and Legal Basis, and
(ii) Claim (#12) of Sepehr Omrani as Duplicate

fr. 2/7/17

Docket 130

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

On 3/30/17, the parties filed a stipulation as to the allowance of Sepehr Omrani's claim. This will be allowed as a general unsecured claim in the amount of \$206,983 as claim #12. Claim #11 will be disallowed and claim #12 will be the sole claim.

Thank you for working this out. The hearing on 4/4/17 is off calendar. The Court will signed the lodged order forthwith.

prior tentative ruling (2/7/17)

BECAUSE THE TRIAL DATE IS SO NEAR, THE COURT IS SENDING THE PARTIES THIS TENTATIVE RULING EVEN BEFORE THE MOVANT HAS HAD AN OPPORTUNITY TO FILE A REPLY BRIEF. IF THE PARTIES AGREE, IT CAN BECOME THE FINAL RULING WITHOUT THE NEED FOR ORAL ARGUMENT.

BACKGROUND

The Proof of Claim and the Objection Thereto

Sepehr Omrani filed a proof of claim in the amount of approximately \$240,000. This was based on an April 2014 agreement between Samuel Shams, on behalf of Major Textile and Major Apparel Group [Major Groups], and Omrani and two others [Omrani Parties]. This superseded a prior agreement between these parties. Shams personally guaranteed the

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payments. The copy of the note attached to the proof of claim was signed by Shams, but not by the Omrani Parties. Attached to the proof of claim is a list of payments that were apparently received from the Debtor from 5/1/14 through 10/23/14. Thereafter, Shams continued to make weekly payments through 7/10/15. (Attached to the objection (dkt. 43) are copies of a series of cashier's checks to Major Textile and from the Major Group and Shams starting on 7/9/10. No money was transferred to the Major Groups or Shams after 4/30/14 and all monies paid to the Omrani Parties from 5/1/14 are accurately reflected on the proof of claim.

The objection to claim asserts that between 7/9/10 and 1/15/13, the Debtor received 16 loans-checks totaling \$480,000 (\$30,000 from Omrani and \$450,000 from Yakobian). It also asserts that between 7/13 and 9/15, the Debtor and/or Shams paid Yakobian \$470,000 and paid Omrani \$88,400.

The issue is what, if any, balance is owing.

The objection also requests that claim 12 be disallowed as a duplicate. On 12/1/15, Omrani filed an amended claim 12, which actually amended claims 11 and 12, but was in the same amount. Attached to this claim is a "Confirmation of Loan," signed by Shams on 5/1/14 on behalf of himself, Major Textile, and Major Apparel. This differs from the "Confirmation of Loan" attached to the initial claims 11 and 12. The major difference between the two documents seems to be that the second one specifies weekly payments of \$1,100 (as opposed to monthly payments of \$4,400 divided into four payments per month) and that all payments will be applied to principal and only then would the accrued interest become payable (apparently in full).

Omrani opposed the objection, asserting that the Debtor received a total of \$691,000 in that Shams omitted two additional payments totaling \$211,000 - \$100,000 on 3/5/13 and \$111,000 on 1/1/14. This last amount was in cash and Omrani attaches a "Confirmation of Cash Loan."

Omrani then states that the repaid amount was \$494,000 and not \$558,400 in that checks were returned NSF. Beyond that, \$60,000 worth of checks in 2011 were made payable to cash and endorsed by Shams and not paid to Yakobian. Shams signed a confirmation that he still owed Yakobian the \$60,000.

In his reply, Shams states that the \$100,000 cashier's check was made payable to him and not to the Debtor. Neither Shams nor the Debtor received the \$111,000 and the document purporting to confirm receipt has a forged signature. The NSF checks were redeposited and paid or not included in the

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list of payments made. The \$60,000 were cashier's checks made payable to Yakobian and not checks made payable to cash. As to the summary, Debtor inadvertently left off a \$15,000 check so the total paid to the Omrani Parties is \$573,400.

Validity of the 1/1/14 Confirmation of Cash Loan

The validity of the 1/1/14 "Confirmation of Cash Loan" as to the \$110,000 has been questioned by Shams and an expert was employed by him to examine it. The issue then arose as to who has the original and what the expert examined. She found that the signatures appear to be authentic. Shams then moved to preclude this testimony, asserting that the expert had not reviewed the original or demanding the original so that his expert could review it. The Court ordered that there must be declarations as to chain of custody and that whatever the expert looked at had to be available. Examination of the expert, etc. could take place at trial.

THE MOTION IN LIMINE

Omrani brings this motion in limine to preclude Shams "from introducing any and all evidence, oral or documentary, of loans, payments or contracts between the parties that were made prior to signing the Confirmation of Loan dated May 1, 2014, at the evidentiary hearing." Although the amount owing prior to that date was disputed, there was a compromise that the balance due was \$265,000 plus interest thereon at 10% per annum. This was a joint effort between Saeed Kayanirad (Sham's business partner), Shams, Soheil Omrani (claimant's brother/co-creditor). There were two confirmations signed on 4/23/14 so that one original could be held by Omrani and the other by his brother.

Similarly, two additional confirmations were signed and dated 5/1/14 to add a start date. Neither the Debtor nor Shams disputes signing any of these documents.

The compromise was so that the Creditors would not file a lawsuit. The weekly payment amount was reduced in exchange for the Debtor's written confirmation of the amount and the continued personal guarantee of Shams. In fact, from 5/5/14 to 7/17/15, Shams made weekly payments of \$1,100 in accordance with the confirmations.

The issue of how much was paid prior to these documents is irrelevant and the prejudicial effect far outweighs the probative value.

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The agreement is an account stated and it supersedes the prior accounting. It is a new contract and the Court cannot inquire as to the prior one.

Beyond being an account stated, it is also a novation. Cal. Civ. Code § 1530. Thus, the original obligation is extinguished.

Opposition

At the trial, the evidence will demonstrate that the Debtor and/or Shams paid Yakobian and/or Omrani a total of \$588,400 with respect to the loans/checks/advancements made to the Debtor pursuant to the April 2014 agreement. Thus there is no debt owing.

Omrani submitted no evidentiary objections to the Shams exhibits. A motion in limine is not a vehicle to determine which timely submitted exhibits are admissible if they are not subject to any evidentiary objection. Rather it is a request for the court's guidance concerning pending evidentiary questions.

In actuality, this is a motion for summary judgment, but has been filed in violation of Rule 9011. Rosendo Gonzalez sent an email requesting the non-filing and then the withdrawal of this motion. This was not done, so Gonzalez has incurred fees (about \$1,600), but cannot adhere to the safe harbor provisions given the pending dates of the motion and of the trial. He requests the Court to impose the appropriate sanctions.

Analysis

Although there is no specific rule covering motions in limine, these are well recognized under the court's inherent power to manage the trial and are left to the court's discretion. United States v. Holmquist, 36 F.3d 154, 163 (1st Cir. 1994.) It is most commonly used to prevent the introduction of certain evidence in that the evidence is prejudicial.

In this case, the issue is how much is owing the Omrani Parties. This will be determined under California law. There is no dispute as to the authenticity of the May 1, 2014 Confirmation of Loan. Thus, the question arises as to whether that document, signed by Shams on his own behalf and that of the debtor corporation, creates a situation where all prior calculations are irrelevant.

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The movant cites to a string of cases for the holding that when parties come to an agreement as to the final balance due and owing from one to the other, it is an account stated and the original (prior) accounts are merged into it unless the new balance is a result of fraud or mistake. 1 Cal Jur.3d Accounts and Accounting §40 et. seq. summarize the law as to accounts stated. There must be a previous transaction between the parties, an agreement on the amount due, and a promise to pay that amount. §43. Even if the claim is being compromised and it is of doubtful validity, there is still sufficient consideration for the agreement to serve as an account stated. §47. This constitutes a new contract and any action must be brought on the new contract and not the prior one: "... an account stated may thus only be impeached, opened, and rectified on such grounds as fraud, mistake, duress, or illegality." §54

Unless an account stated may be impeached on grounds such as fraud, mistake, duress, or illegality,

[a]s a new and independent contract, the account stated supersedes the original obligation for all ordinary purposes. In other words, where parties dealing with one another have stated and adjusted their accounts and agreed on the balance due, that balance loses the peculiar attributes of an account and ceases to be an account, and prior items, transactions, and negotiations are merged in the balance so ascertained.

An action upon an account stated is not upon the original dealings and transactions of the parties. An action upon an account stated is upon the new contract by and under which the parties have adjusted their differences and reached an agreement. Thus, in an action on the original account, a plea of account stated, if supported by evidence, will bar recovery.

Id. §55.

Similarly, novation creates a new obligation and the prior one is

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extinguished and ceases to exist. Cal. Civ. Code §1530 et seq. This can be created by the substitution of a new obligation between the same parties with the intent to extinguish the old one.

In this motion, Omrani provides his declaration and that of his brother concerning the creation of the April and May 2014 notes. These declarations support the assertion that the notes were created as a settlement of a disputed balance and that the parties agreed that as of April 1, 2014 the amount owed would be \$265,000 with 10% interest to accrue.

No opposing evidence has been submitted to counter this.

Were this in the form of a motion for summary judgment, the Court would hold that the amount owing as April 1, 2014 was \$265,000, with interest to accrue at 10% per annum until paid in full. However, this motion does not meet the procedural specifics for summary adjudication. Nonetheless, unless the Major Groups have countervailing admissible evidence of fraud or duress, etc., it is within the Court's discretion to prevent evidence of earlier loans/payments to ascertain the amount owing as of April 1, 2014.

According to the chart attached to the proof of claim, there is no interest to be paid for the time prior to the May 1, 2014 note and simple interest is being calculated daily at 10% on the declining principal balance. There has not been an objection as to the arithmetic here, but if you cannot agree on this, this would be an issue for trial. And, it would be the only issue for trial. The validity of the 1/1/14 confirmation of cash loan is not relevant since all prior payments and agreements are superseded by the May 1, 2014 agreement.

In summary, unless there is evidence that invalidates the May 2014 agreement as due to fraud, duress, etc., the principal as of April 1, 2014 will be \$265,000. Interest will accrue from April 1, 2014 at 10% on the declining amount. At this point, given the briefs, objections, and declarations put forth by Shams, it appears to be too late to claim that the May 2014 agreement is legally invalid. To the extent that there may be a question of math as to the calculation of interest, please try to work this out so that the trial can be

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averted.

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Please note that for the purposes of this claim, unless this is a solvent estate, interest terminates at the time of the filing of the bankruptcy (10/23/14).. However, as to Mr. Shams, it continues until paid in full. I have no authority to complete the calculation beyond 10/23/14, but hope that my findings will allow the parties to do so without further litigation.

Party Information

Debtor(s):

Major Textile Imports Inc.

Represented By
Jaenam J Coe
Michael Jay Berger

Trustee(s):

Carolyn A Dye (TR)

Represented By
Christian T Kim
James A Dumas Jr

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

1:16-12408 Massoud Aron Yashouafar

Chapter 11

#21.00 Status Conference re: chapter 11 case

fr. 9/27/16, 10/25/16; 10/26/16; 11/15/16,
12/6/16, 3/28/17

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Joint administration with Solyman Yashouafar case. Continue to 5/30/17 at
10:00 a.m.

Party Information

Debtor(s):

Massoud Aron Yashouafar

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

1:06-10306 Functional Restoration Medical Ctr Inc and Vengroff.

Chapter 7

#22.00 Motion for Release of Funds Deposited
with Bankruptcy Court Clerk

Docket 762

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Madhure and Shakuntala Manjunath seek the release of funds deposited with the court in this case. This motion was served on the Trustee, the UST, the Debtor, and the U.S. Attorney. The Court gave notice to all interested parties. **However, the prior attorney - Timothy Donahue - was not served with this motion.**

Unless he was served in a timely fashion, this will be continued to May 2, 2017 at 10:00 so that the movant can serve him.

Party Information

Debtor(s):

Functional Restoration Medical Ctr

Represented By
Daniel A Lev
Michael S Kogan

Movant(s):

Madhure Manjunath and Shakuntala

Represented By
Michael J Hemming

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Richard Burstein
Lesley Davis
Steven T Gubner
Jeffrey P Nolan

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

1:15-14213 Michael Robert Goland

Chapter 7

Adv#: 1:16-01046 Lewis v. Goland

#23.00 Motion to Reconsider Portions of Judgment
Pursuant to Rule 59(e)

fr. 4/18/17

Docket 80

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Continued without appearance to 5/4/17 at 10:00 a.m.

Party Information

Debtor(s):

Michael Robert Goland

Represented By
David S Hagen

Defendant(s):

Michael Goland

Represented By
David S Hagen

Plaintiff(s):

Bret D Lewis

Represented By
Bret D Lewis

Trustee(s):

Nancy J Zamora (TR)

Pro Se

Amy L Goldman (TR)

Pro Se